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HOUSE BILL 189

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; CLARIFYING ALCOHOL OR DRUG ABUSE SCREENING AND TREATMENT REQUIREMENTS FOR CONVICTED DWI OFFENDERS; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders him incapable of
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for a person who has an alcohol
4 concentration of eight one hundredths or more in his blood or
5 breath to drive a vehicle within this state.

6 D. Aggravated driving while under the influence of
7 intoxicating liquor or drugs consists of a person who:

8 (1) has an alcohol concentration of sixteen
9 one hundredths or more in his blood or breath while driving a
10 vehicle within this state;

11 (2) has caused bodily injury to a human being
12 as a result of the unlawful operation of a motor vehicle while
13 driving under the influence of intoxicating liquor or drugs; or

14 (3) refused to submit to chemical testing, as
15 provided for in the Implied Consent Act, and in the judgment of
16 the court, based upon evidence of intoxication presented to the
17 court, was under the influence of intoxicating liquor or drugs.

18 E. ~~Every~~ A person under first conviction pursuant
19 to this section shall be punished, notwithstanding the
20 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
21 not more than ninety days or by a fine of not more than five
22 hundred dollars (\$500), or both; provided that if the sentence
23 is suspended in whole or in part or deferred, the period of
24 probation may extend beyond ninety days but shall not exceed
25 one year. Upon a first conviction pursuant to this section, an

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1 offender may be sentenced to not less than forty-eight hours of
2 community service or a fine of three hundred dollars (\$300).

3 The offender shall be ordered by the court to participate in
4 and complete a screening program described in Subsection H of
5 this section and to attend a driver rehabilitation program for
6 alcohol or drugs, also known as a "DWI school", approved by the
7 bureau and also may be required to participate in other
8 rehabilitative services as the court shall determine to be
9 necessary. In addition to those penalties, when an offender
10 commits aggravated driving while under the influence of
11 intoxicating liquor or drugs, the offender shall be sentenced
12 to not less than forty-eight consecutive hours in jail. If an
13 offender fails to complete, within a time specified by the
14 court, any community service, screening program, treatment
15 program or DWI school ordered by the court, the offender shall
16 be sentenced to not less than an additional forty-eight
17 consecutive hours in jail. Any jail sentence imposed pursuant
18 to this subsection for failure to complete, within a time
19 specified by the court, any community service, screening
20 program, treatment program or DWI school ordered by the court
21 or for aggravated driving while under the influence of
22 intoxicating liquor or drugs shall not be suspended, deferred
23 or taken under advisement. On a first conviction pursuant to
24 this section, any time spent in jail for the offense prior to
25 the conviction for that offense shall be credited to any term

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1 of imprisonment fixed by the court. A deferred sentence
2 pursuant to this subsection shall be considered a first
3 conviction for the purpose of determining subsequent
4 convictions.

5 F. A second or third conviction pursuant to this
6 section shall be punished, notwithstanding the provisions of
7 Section 31-18-13 NMSA 1978, by imprisonment for not more than
8 three hundred sixty-four days or by a fine of not more than one
9 thousand dollars (\$1,000), or both; provided that if the
10 sentence is suspended in whole or in part, the period of
11 probation may extend beyond one year but shall not exceed five
12 years. Notwithstanding any provision of law to the contrary
13 for suspension or deferment of execution of a sentence:

14 (1) upon a second conviction, [~~each~~] an
15 offender shall be sentenced to a jail term of not less than
16 seventy-two consecutive hours, forty-eight hours of community
17 service and a fine of five hundred dollars (\$500). In addition
18 to those penalties, when an offender commits aggravated driving
19 while under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to a jail term of not less than
21 ninety-six consecutive hours. If an offender fails to
22 complete, within a time specified by the court, any community
23 service, screening program or treatment program ordered by the
24 court, the offender shall be sentenced to not less than an
25 additional seven consecutive days in jail. A penalty imposed

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1 pursuant to this paragraph shall not be suspended or deferred
2 or taken under advisement; and

3 (2) upon a third conviction, an offender shall
4 be sentenced to a jail term of not less than thirty consecutive
5 days and a fine of seven hundred fifty dollars (\$750). In
6 addition to those penalties, when an offender commits
7 aggravated driving while under the influence of intoxicating
8 liquor or drugs, the offender shall be sentenced to a jail term
9 of not less than sixty consecutive days. If an offender fails
10 to complete, within a time specified by the court, any
11 screening program or treatment program ordered by the court,
12 the offender shall be sentenced to not less than an additional
13 sixty consecutive days in jail. A penalty imposed pursuant to
14 this paragraph shall not be suspended or deferred or taken
15 under advisement.

16 G. Upon a fourth or subsequent conviction pursuant
17 to this section, an offender is guilty of a fourth degree
18 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
19 sentenced to a jail term of not less than six months, which
20 shall not be suspended or deferred or taken under advisement.

21 H. Upon any conviction pursuant to this section, an
22 offender shall be required to participate in and complete,
23 within [~~a time specified by the court~~] thirty days, an alcohol
24 or drug abuse screening program approved by the department of
25 finance and administration and, if necessary, a treatment

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1 program approved by the court within a time specified by the
2 court. The requirement imposed pursuant to this subsection
3 shall not be suspended, deferred or taken under advisement.

4 I. Upon a first conviction for aggravated driving
5 while under the influence of intoxicating liquor or drugs
6 pursuant to the provisions of Subsection D of this section,
7 as a condition of probation, an offender shall be required to
8 have an ignition interlock device installed and operating for a
9 period of one year on all motor vehicles driven by the
10 offender, pursuant to rules adopted by the bureau. Unless
11 determined by the sentencing court to be indigent, the offender
12 shall pay all costs associated with having an ignition
13 interlock device installed on the appropriate motor vehicles.
14 If an offender drives a motor vehicle that does not have an
15 ignition interlock device installed on the motor vehicle, the
16 offender may be in violation of the terms and conditions of his
17 probation.

18 J. Upon a first conviction for driving while under
19 the influence of intoxicating liquor or drugs pursuant to the
20 provisions of Subsection A, B or C of this section, as a
21 condition of probation, an offender may be required to have an
22 ignition interlock device installed and operating for a period
23 of one year on all motor vehicles driven by the offender,
24 pursuant to rules adopted by the bureau. Unless determined by
25 the sentencing court to be indigent, the offender shall pay all

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1 costs associated with having an ignition interlock device
2 installed on the appropriate motor vehicles. If an offender
3 drives a motor vehicle that does not have an ignition interlock
4 device installed on the motor vehicle, the offender may be in
5 violation of the terms and conditions of his probation.

6 K. Upon any subsequent conviction pursuant to this
7 section, as a condition of probation, a subsequent offender
8 shall be required to have an ignition interlock device
9 installed and operating for a period of at least one year on
10 all motor vehicles driven by the subsequent offender, pursuant
11 to rules adopted by the bureau. Unless determined by the
12 sentencing court to be indigent, the subsequent offender shall
13 pay all costs associated with having an ignition interlock
14 device installed on the appropriate motor vehicles. If a
15 subsequent offender drives a motor vehicle that does not have
16 an ignition interlock device installed on the motor vehicle,
17 the subsequent offender may be in violation of the terms and
18 conditions of his probation.

19 L. In the case of a first, second or third offense
20 under this section, ~~[the] magistrate [court has]~~ courts have
21 concurrent jurisdiction with district courts to try the
22 offender.

23 M. A conviction pursuant to a municipal or county
24 ordinance in New Mexico or a law of any other jurisdiction,
25 territory or possession of the United States that is equivalent

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1 to New Mexico law for driving while under the influence of
2 intoxicating liquor or drugs, and that prescribes penalties for
3 driving while under the influence of intoxicating liquor or
4 drugs, shall be deemed to be a conviction pursuant to this
5 section for purposes of determining whether a conviction is a
6 second or subsequent conviction.

7 N. In addition to any other fine or fee ~~[which]~~
8 that may be imposed pursuant to the conviction or other
9 disposition of ~~[the]~~ an offense under this section, the court
10 may order the offender to pay the costs of any court-ordered
11 screening and treatment programs.

12 0. As used in this section:

13 (1) "bodily injury" means an injury to a
14 person that is not likely to cause death or great bodily harm
15 to the person, but does cause painful temporary disfigurement
16 or temporary loss or impairment of the functions of any member
17 or organ of the person's body; and

18 (2) "conviction" means an adjudication of
19 guilt and does not include imposition of a sentence."

20 Section 2. EFFECTIVE DATE. --The effective date of the
21 provisions of this act is July 1, 2003.

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